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to

The Supreme Court of the United States

OCTOBER TERM 1984

Burton R. Landes, Petitioner,

vs.

Department of Justice, Respondent.

On Appeal from the United States Circuit Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

TO BE SERVED UPON:

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TABLE OF CONTENTS

	PAGES
Questions Presented for Review	3
List of all Parties to the Proceeding	4
Reference to the Official and Unofficial Reports of Opinions delivered in Courts or Administrative Agencies below	4, 6-8
Statutes and Regulations which the case involves	10-11
Statement of the Case	5
(date/time of ORDER to be reviewed, date/time of petition for Re-Hearing, Statutory provision conferring on the U.S. Supreme Court jurisdiction)	7-8
Basis for Original Jurisdiction in U.S. District Court for the District of Columbia, the court of first instance	3, 8
Argument	11-12
Conclusion	13

TABLE OF CITATIONS

CASES

Forsham v. Harris 445 U.S. (1980)	13
Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 100 S. Ct. 960 (1980)	13
McGehee v. C. I. A., 697 F. 2d 1095 (1983)	3, 13

STATUTES

Title 5 USC Subsection 552(a)(4)(B)	3
Title 28 USC APPENDIX -*Rules of The*	

Errata Sheet

The TABLE OF CONTENTS, CITATIONS, STATUTES (page 2) may follow list of parties (page 4).

A STATEMENT OF THE CASE (page 5) may precede ARGUMENT (page 11).

The questions presented for review are:

(1) Did the Department of Justice's, FBI Special Agent Michael M. Roman's deniability declaration (demonstrably false) of having a file on Sarah Churchill, daughter of Sir Winston and Lady Clementine, mislead Judge Thomas A. Flannery to a dismissal order in its pose of stupidity, restraint of trade, or as an outright lie? Or in space-time, all three?

(2) In the light of one, two, or all three, should not the disputed documents be reviewed *in camera, de novo* in the United States District Court for the District of Columbia under *Title 5 United States Code 552(a)(4)(B) and as affirmed by subsequent court causes, particularly the late *McGehee v. C. I. A.*, 697 F. 2d 1095 (1983)?

*Title 5, United States Code, Section 552(a)(4)(B) reads:

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

Edwin Meese may be added to the parties to the proceedings as the present Attorney General: (Burton R. Landes versus)

Department of Justice:

William French Smith, United States Attorney General, Defendant...;

Edwin Meese, successor, Respondent;

William H. Webster, Director FBI, Defendant, Respondent;

James K. Hall, Chief, Freedom of Information Privacy Acts Section, Records Management Division, FBI, Defendant, Respondent;

Michael M. Roman, Special Agent FBI, Intervenor-Defendant, Respondent;

AMERICAN HISTORICAL ASSOCIATION - Recusant in effected support of Defendant, Respondent;

Ronald R. Landes, Brother, Recusant - neutral not wishing to be citizen process server;

Winifred Landes Faust, Sister, Recusant - neutral not wishing to be citizen process server.

A list of official and unofficial orders delivered in the administrative agencies of the courts below: (1) James K. Hall to petitioner - (after latter's request) RE: *The Sarah Churchill File Request No. 239366* "...search of the indices to our records will be made...processed..." -dated July 25, 1983. There were months without further actions on *Request No. 239366...* (2) *Complaint;* Appearance -December 5, 1983, following include motions of parties and returns of service of plaintiffs on defendants from -December 5, 1983 through March 15, 1984. There was an answer of defendants to the complaint on -March 19, 1984. A status hearing was scheduled for -May 29, 1984. There were various motions for summary judgment, dismissal and delay. There was the dismissal order of Thomas A. Flannery, J., -August 28, 1984. Then the appeal process as detailed below in a statement of this cause.

A STATEMENT OF THE CASE:

Burton R. Landes is a writer and publisher, self-employed working from his home at 11 College Avenue, Trappe, Pennsylvania, 19426. Though further confirmation and footnoting of facts, opinions and conclusions had been deemed professionally desirable, it was not mandatory and so, for reasons which may become clear as this writing unfolds, the *Study/Sarah Churchill* is now in its 5th edition and on sale.

The petitioner, above-described in part, is an honorably discharged veteran of the United States Coast Guard Reserve (Honorable Medical, 1945, see below) and as an historian, as well as good citizen, requested a search for the file of Sarah Churchill, daughter of Sir Winston and Lady Clementine, under the Freedom of Information Act, as enacted into Public Law 80-554, September 6, 1966, 80 Stat. 383 and as amended and interpreted by the Executive and the Judiciary. There would not be compliance or explanation within the prescribed ten days. The petitioner sued for compliance. The course of proceedings is as transcribed as follows:

USDC DISTRICT OF COLUMBIA PROCEEDINGS

Date	
1983	
Dec. 5	COMPLAINT; Appearance. (io)
Dec. 5	SUMMONS (3) issued. (io)
Dec. 28	MOTION of Burton R. Landes for leave of American Historical Association to file an amicus curiae; Exhibit (Copy of Letter to Mr. Landes from Jamil S. Zainaldin). (io)
Dec. 28	MOTION of plaintiff for leave to file letter of refusal to serve summons and complaint on U.S. Attorney (District of Columbia); Exhibit (Copy of Letter). (io)
Dec. 28	MOTION of plaintiff for leave to file letter of refusal to serve summons and complaint on James K. Hall, Chief, Freedom of Information Privacy Acts Section, Records Management Division, Washington, D.C. 20535;
1984	Exhibit (Copy of Letter). (io)
Feb. 17	RETURN ON SERVICE upon the U.S. Attorney on Feb. 16, 1984, by hand. (dc)
Feb. 22	AFFIDAVIT OF SERVICE upon deft James Hall on Feb. 21, 1984. (io)
Feb. 22	AFFIDAVIT OF SERVICE upon deft U.S. Attorney General on Feb. 21, 1984. (io)
Mar. 15	AFFIDAVIT OF SERVICE upon U.S. Attorney on Feb. 16, 1984. (io)
Mar. 19	ANSWER of defts to the complaint.
Mar. 19	CALENDARED. C/D (N)
Mar. 20	STATUS HEARING AGENDA-ED FOR MAY 29, 1984.
Mar. 23	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.
May 2	DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME *nunc pro tunc.*

May 18 DEFENDANTS' MOTION TO DISMISS.

May 29 PLAINTIFF'S MOTION FOR DELAY - As Status Hearing Postponed.

June 23 PLAINTIFF'S 'RESTRAINT OF COMPETITION' *et al.* Letter to Att. Van Berg.

July 2 PLAINTIFF'S LETTER 'FIRST RIGHTS TO SARAH CHURCHILL'S FILE,' *et al.* To Defendants' Counsel Joan S. Van Berg.

Aug. 28 MEMORANDUM AND DISMISSAL ORDER Of Thomas A. Flannery, J.

Aug. 29 PLAINTIFF'S *NOTICE OF APPEAL.*

[Docket USCCA District of Columbia]

Sept. 14 Copy of Pro Se Notice of Appeal and Docket Entries from Clerk, DC (n-2)

Sept. 14 Docketing Statement was mailed to Appelant

Sept. 14 Docketing Fee was paid in The District Court on Sept. 4, 1984.

Sept. 20 4-Appellant's Docketing Statement (m-17).

Sept. 25 Clerk's Order that a Briefing Schedule is set as follows: Appellant(s) Brief and Appendix— 12/03/84; Appellee(s) Brief— 01/02/85; Appellant(s) Reply Brief— 01/16/85. The Clerk shall include this case in the pool of cases available for selection on this Court's March, 1985 Calendar

Oct. 1 15-Appellant's Brief (m-24)

Oct. 1 7-Joint Appendix (m-24)

Nov. 15 4-Appellees' Motion for Summary Affirmance (m-15)

Nov. 26 4-Appellant's Response to Appellees Motion for Summary Affirmance (m-17)

Dec. 3 *Joan S. Van Berg/oz/ozn/B. R. Landes* (Letter)

Dec. 18 MOTION FOR CHANGE OF APPELLEES' PARTY NAMES TO NAME DEPARTMENT OF JUSTICE.

Dec. 21 APPELLEES' MOTION FOR AN EXTENSION OF TIME

Dec. 27 ANSWER To Appellees' Motion For An Extension Of Time

1985

Jan. 23 APPELLEES' MOTION FOR SUMMARY AFFIRMANCE GRANTED

Jan. 26 PETITION FOR RE-HEARING (Filed 1-29-85)

Feb. 19 PETITION FOR RE-HEARING DENIED BEFORE: WRIGHT, MIKVA & BORK

Feb. 21 NOTICE OF APPEAL as noted by ROBERT A. BONNER, Chief Deputy Clerk on Date Feb. 27, 1985.

The basis for federal jurisdiction in the United States District Court for the District of Columbia is founded on Title 5, United States Code, Section 552(a)(4)(B) as heretofore transcribed.

The jurisdiction of the Supreme Court of the United States is invoked:

(i) APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE GRANTED -January 23, 1985

(ii) PETITION FOR RE-HEARING DENIED BEFORE: WRIGHT, MIKVA & BORK -February 19, 1985

(iii) ... (INAPPLICABLE) ...

(iv) Statutory Provisions Rule 17(.2),*

* When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and unusual course of judicial proceedings or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

Statutes and Regulations which the case involves, in addition to Title 5 USC 552(a)(4)(B) as transcribed as a footnote on page one and Rule 17(.2.) of Title 28, APPENDIX — *Rules Of The Supreme Court*, are -

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

Title 50 USC 4-301 which reads: *

Sec. 4.3 *Access by Historical Researchers and Former Presidential Appointees.*

(a) The requirement in Section 4.1(a) that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes may be waived as provided in Section 4.3(b) for persons who:

(1) are engaged in historical research projects, or

(2) previously have occupied policy-making positions to which they were appointed by the President.

(b) Waivers under Section 4.3(a) may be granted only if the originating agency:

(1) determines in writing that access is consistent with with the interest of national security;

(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this Order; and

* Federal Register/Vol. 47, No. 66/Tuesday, April 6, 1982/Presidential Documents, page 14881.

(3) limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

ARGUMENT

The reasons the writ should be allowed are spelled out in the United States Court of Appeals for the District of Columbia' Circuit's own decision, though by a different panel of judges - Judge Bork in the minority in the *McGehee v. C.I.A.*, 697 F.2d 1095 (1983) on both panels, however. Point by point analysis to synthesis was recorded in the petitioner's request for a re-hearing which was denied on February 19, 1985 by Judges Wright, Mikva and Bork. Rule 17(.2.) encompasses the particulars argued below in the six points delineated by the court in *McGehee v. C. I. A.*, as above. The crucial documents are the Roman Declaration (petitioner's copy wanting in outline and in chronology of events). It's validity was sworn to by its author, nonetheless, *under penalty of perjury.*

The petitioner particularly points out and the following documents as he understands:

No. 190-4251-2 has markings, in addition to "R/A" one "Roman 8-2/83" - "F B I" - "d/w" Circled - "wjg FOIA." Below, left, there is the hand-stamp "67 FEB 21 1984." There is also a hand-stamp "17 JAN 23 1984 ." FOIA follows one "wjg ." Below left, under "239366 (Requester's Number)" and "J. W."

No. 190-42541-4 has appended the Sarah Churchill index and the letter enclosure from the requester is dated September 7, 1983. Markings include "P/A" - "R/A" whatever "Roman 9-12-83" - "ack 11-28-83 wjg" and "wjg FOIA ." There is the circled "d/w" (?) The date stamp "17 JAN 23 1984" appears - also - "DE-108" (hand-stamp). There are initials bottom left "RM" - "SM" separated by

6958. Above Request No. 239366, *The Sarah Churchill File* are the letters "NO LOC" not initialed or dated. There appears a second "d/w" (?) At this point in time there can be no doubt that the Sarah Churchill file requested is that of Sarah Churchill, daughter of Lady Clementine and Winston Spencer Churchill.

No. 190-42541-6 contains the crucial "**Documents Have Been Located Which May Pertain To Your Request .**" In the upper left hand corner is the now familiar "P/A" (or R/A?). The faint initials "wfs" (?) seem to be crossed out. A "6" appears to the right of the slanted line. Dated November 28, 1983 , mailed by the FBI on the same date, EXEC AD-LES "wjg" appear on the stamp added by "57 FEB 21 1984." The writer(s) of the letter are noted as WJG:avs/lal. It is signed by James K. Hall, Chief, Freedom of Information Privacy Acts Section Records Management Division. There is a stamp "MAIL ROOM" and a checkmark JHK, and below the surname *Roman* (Michael Roman of the Roman declaration?). There is another stamp date "17 JAN 23 1984." An evidentiary initial/initials is scrawled out.

CONCLUSION

The petitioner appeals to this honorable Court to remand this cause to the District of Columbia for *in camera* inspect of the anonymous and "pedestrian" - "prosaic" daughter of whom? Further, the petitioner would be guaranteed first rights in electic portions of any future reveal of the file of Sarah Churchill, daughter of Sir Winston Churchill. *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 100 S.Ct. 960 (1980) and *Forsham v. Harris*, 445 U.S. 156 (1980), along with those justices not taking part in the former, would suggest that at least 6 justices of the United States Supreme Court may see it appellant's way. The petitioner quotes from Justice Rehnquist, writer of the majority opinion in *Kissinger v. Reporters Committee for Freedom of the Press*, hereincited, "Under 5 USC Section 552(a)(4)(B) federal jurisdiction is dependent upon a showing that an agency has (1) 'improperly'; (2) 'withheld'; (3) 'agency records.' " Judicial authority to devise remedies and enjoin agencies can only be invoked, under the jurisdictional grant conferred by Section 552, if the agency has contravened all three components of this obligation." [-SEE *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 153-154.]

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